Supreme Court, U. S.
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In the
Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-625

UNITED STATES OF AMERICA,
Plaintiff,

versus

429.83 ACRES OF LAND, MORE OR LESS, SITUATED IN IBERIA PARISH, STATE OF LOUISIANA, AND MORTON-NORWICH PRODUCTS, INC., ET AL, AND UNKNOWN OWNERS,
Defendants.

MORTON-NORWICH PRODUCTS, INC., SHELL OIL COMPANY AND BENJAMIN MINERALS, INC., ET AL
Defendants-Respondents,

versus

C. PATOUT BURGUIERES
Defendant-Petitioner.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF ON BEHALF OF DEFENDANTS-RESPONDENTS

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OPINIONS BELOW

The District Court's summary judgment is unreported and is found on page 3 of the Appendix attached to the Petition for Writ of Certiorari. The District Court's amended judgment is also unreported and is found on page 14 of the Appendix to the Petition for Writ of Certiorari. The Fifth Circuit Court of Appeals' affirmance is unreported and is found on page 29 of the Appendix to the Petition for Writ of Certiorari.

QUESTIONS PRESENTED

Whether this Court should grant certiorari to review a judgment of the Fifth Circuit Court of Appeals affirming the Summary Judgment of the U.S. District Court for the Western District of Louisiana dismissing petitioner and the J.M. Burguieres Company, Ltd. as purported owners of an interest in Grand Cote or Weeks Island.

COUNTERSTATEMENT OF THE CASE

The petition hereby opposed evolves from a condemnation proceeding instituted by the United States of America to acquire certain land for storage of strategic petroleum reserve and construction of related facilities. [1] R.pp.1-77 [2].

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1. Said proceeding was brought in the United States District Court for the Western District of Louisiana, Lafayette Division in accordance with 40 U.S.C. 258a, 33 U.S.C. 257, 89 Stat. 871, 91 State. 565, Public Law 94-303 and Public Law 94-373.

2. References (Pet ... A) are to petitioner's Appendix. References to Petitioner's Certiorari Petition are indicated as (Pet ...). "R ..." refers to the record in the Court of Appeals.

Following the filing of the Notice of Condemnation in these proceedings addressed to respondents, petitioner entered an appearance in *propria persona* in which he claimed a one-sixth interest in the land at issue. The stated basis of petitioner's claim was inheritance from his father, who was alleged to have owned the land in question.

This allegation was accompanied by contentions that there was no legal record of petitioner's father having sold this property and that the property was incorrectly located on government surveys. R.pp.247-257. [3]

Answering petitioner's filing, respondent, Morton-Norwich, denied petitioner's claim of ownership and alleged that it was the owner of the property at issue. In addition, it pleaded title by adverse possession and that petitioner's claim could only be asserted by a petitory action as provided in Article 3651 et seq. of the Louisiana Code of Civil Procedure. R.pp.266-269.

In due course, respondents moved for Summary Judgment on the grounds that petitioner's father had sold the only

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3. On May 15, 1978 Petitioner filed "Amendment and Corrections to Certain Items Contained in My Letter of April 16, 1978" wherein petitioner revised his claim to be a 1/5 interest in his mother's 1/2 interest and a 1/6 interest in his father's 1/2 interest and alleged that the property which is the subject of the condemnation is part of Cypremort Plantation which was owned by his father and is located, contrary to government surveys, in Section 31, Township 14 South, Range 7 East. R.pp.274-275.

interest acquired by him in the property at issue on the same day on which he had acquired it. Respondents attached to their motion certified copies of the acts of sale to and by petitioner's father as Exhibits MSB-1 and -2 [4].

In a supplemental memorandum in support of their motion, addressed to petitioner's contention that the government surveys incorrectly located the property in question, respondents pointed out that a government survey *creates* sections rather than merely identifying them. R.pp.350-354. [5]

In response to this motion petitioner filed an opposition in which he asserted as an additional basis for his claim that the land at issue was "part of Cypremort Plantation as bought by sections and townships by his father . . ." [6]

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4. M-S-B No. 1 is a succession sale to petitioner's father, J. M. Burguieres, of a 1/4 of 1/2 interest in Grand Cote or Weeks Island from the Estate of Alfred G. Weeks, dated November 19, 1881, recorded in Book "U" at page 341, Entry No. 14597, on November 19, 1881, of the Records of St. Mary Parish R.299). M-S-B No. 2 is a sale to William F. Weeks from Petitioner's father on November 19, 1881, filed in Conveyance Book 9 at Folio 158, of the Records of Iberia Parish, Louisiana. R 301-304).

5. This Supplemental Memorandum was filed in response to petitioner's May 15, 1978 filing of which respondents were not aware until after August 28, 1978.

6. Petitioner refers to a *per aversionem* conveyance from William Weeks to his father dated May 1, 1877 of Cypremort Plantation which was attached to Petitioner's opposition and styled "Exhibit D".

Petitioner also cited various supposed technical deficiencies in the sale to Weeks by his father of his interest in Weeks Island (M-S-B No. 2) and unaccountable, also in the sale *to* his father of Cypremort Plantation. R.pp.317-348. Petitioner also filed his own motion for Summary Judgment but did not fix it for oral argument. R.pp.356-35.

The district judge rendered judgment or respondents' motion dismissing petitioner and J.M. Burguieres Company, Ltd. [7] as purported owner of an interest in the land at issue. R.pp.390-392, which was amended on motion to conform to Rule 54 FRCP. RR.pp.403-404 and 442-444. Petitioner filed several motions directed to the judgment, all of which were denied. R.pp. 370, 375, 393, 394, 397, 406, 412 and 421-453, and appealed to the Court of Appeals for the Fifth Circuit which affirmed in a per curiam opinion. (Pet. 29A). Petitioner then filed several unusual motions in the Court of Appeal and, when they were denied, filed the instant petition.

REASONS FOR DENYING THE WRIT

This Court's Rule 19 sets out the general considerations which the court will employ in determining whether to grant writs of certiorari. It is respectfully suggested that the petition fails to reveal the applicability of any of such considerations to the instant fact situation.

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7. J.M. Burguieres Company, Ltd., the owner of Cypremort Plantation, filed no response to respondents' Motion for Summary Judgment and did not appear at the September 12 hearing in this regard.

It is true that petitioner alleges a taking of petitioner's property without due process of law and without paying him just compensation therefor. The record in the case, however, belies such an allegation. Petitioner's highly original, in *propria persona*, pleadings have been treated with seriousness and dignity by both the district court and the court of appeals. (Pet. A-8) and petitioner's rights to "due process" have been safeguarded to the point of adversely affecting the rights of other parties to a prompt resolution of this condemnation proceeding.

There is no material issue of fact in the present controversy, only a difference of opinion as to the legal interpretation of those facts and no authority exists supportive of petitioner's legal opinion.

Petitioner's father, Jules M. Burguieres, purchased a 7/8 interest in Cypremort Plantation from one William F. Weeks on May 1, 1877. The deed further described the plantation as being located in "Sections 20, 21, 28, 29, 44, 31, 32, 33 in Township 14 South, Range 7 East, and all the lands in Section 2, 3, 4 of Township 15 South, Range 7 East whether included in the lines of said surveys or descriptions or not and whether it contains the same number of acres or not *PROVIDED IT BE IN SAID SECTIONS AND FORMS A PART OF SAID PLANTATION.*" (emphasis added). In the conveyance Weeks promised to complete Burguieres' title by acquiring the 1/8 interest owned by the Succession of A.C. Weeks. (R. 322).

On November 19, 1881, William Weeks, as administrator of A.C. Week's succession, conveyed to Burguieres the Succession's 1/8 interest in Cypremort Plantation thus fulfilling the obligation which he had made on May 1, 1877. In the same conveyance, by separate description, Weeks conveyed to Burguieres the 1/8 interest the succession owned in Grand Cote Plantation, now known as Weeks Island. (R 299).

By instrument dated the same day Jules Burguieres conveyed to William Weeks, individually, the 1/8 interest in Grand Cote Plantation which he had just acquired from Weeks as administrator of A.C. Weeks' succession. (R. 301) Thus, a 1/8 interest in Grand Cote Plantation merely passed through the hands of petitioner's father and title became vested in William Weeks, by whose name, the tract of land is now known.

Being unable to deny the existence of his father's conveyance to Weeks of the 1/8 interest in Grand Cote, petitioner takes the legal position that the deed is invalid because it was not properly recorded. Assuming only for the sake of argument that petitioner is correct in his position that the conveyance was improperly recorded, Louisiana Law is quite clear that improper recordation has no effect as between the parties to a conveyance, but only as to the rights of third parties. La. Civil Code Art. 2266 (1870) *Richmond v. Zapata Development Corporation*, 350 So. 2d 875 (La. 1977). This may, in fact, be an almost universally recognized principle of law because of the obvious injustice of allowing a vendor to escape from a conveyance because his vendee failed to properly record same.

Petitioner has an equally ingenious but also equally erroneous legal argument with respect to the May 1, 1877 conveyance from William Weeks to Jules Burguieres of a 7/8 interest in Cypremort Plantation. The argument, as we understand it, is that the conveyance of Cypremort Plantation actually included Grand Cote Plantation. The fact that Grand Cote Plantation is not located on the official government surveys of the area within the sections of land described in the conveyance is countered by petitioner by simply stating that the surveys are not legally valid and also were prepared through the use of improper surveying techniques. However, as the Fifth Circuit Court of Appeals pointed out . . .

> "these are the same official surveys which the parties to the deed used to describe the property conveyed. Those surveys became a part of the deed as if expressly incorporated. *Cragin v. Powell*, 128 U.S. 691, 9 S.Ct. 203, 32 L.Ed. 566 (1888). Thus, assuming the surveys were wrong, changing the surveys now would avail Burguieres nothing. The intent of the parties to the 1877 deed would still have to be derived by reference to the surveys as they then existed." Pet. 34-A

In addition, petitioner has avoided the question as to why, if the parties actually believed that Cypremort Plantation included within its boundaries Grand Cote Plantation, they would describe it separately from Cypremort in the 1881 deed.

There is no reasonable answer to such question. In fact, there is no reasonable basis for petitioner's claim of ownership to Weeks Island. Petitioner has had his day in court. He has used to the fullest extent possible the legal system and the lower courts' interest in protecting his rights. The courts and their staffs have shown him every consideration and have spent valuable time in assisting him through every step of the federal judicial system. Petitioner has responded to such assistance by making bizarre demands and by alleging non-existent infringements of his right to due process of law. None of petitioner's rights have been infringed upon by the lower courts in this proceeding and other parties to this proceeding have the right to an expeditious conclusion thereof.

CONCLUSION

For the above stated reasons, respondents respectfully submit that the Fifth Circuit Court of Appeals was correct in finding that no genuine issue as to any material fact existed in this case and, that petitioner's legal arguments were without merit. Accordingly, the instant Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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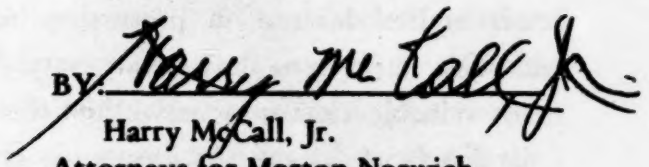
BY: 

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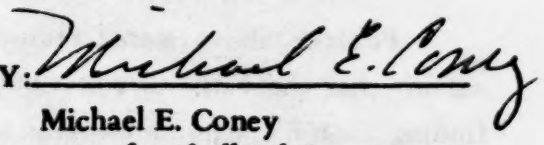
BY: 

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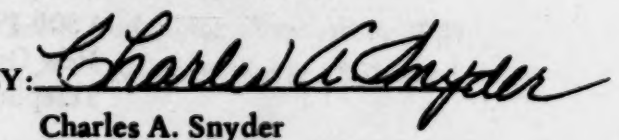
BY: 

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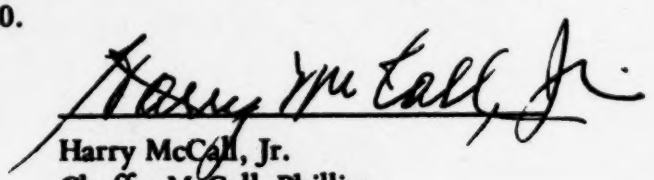
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief was mailed today, postage prepaid, to C. Patout Burguieres, Sr., at his address, 1553 Calhoun Street, New Orleans, Louisiana 70188, and Mrs. Gail Osherenko, Attorney, Land and Natural Resource Division, United States Department of Justice, Washington, D.C. 20530.



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